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Crl.R.C.No.857 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**Crl.R.C.No.857 of 2024
and
Crl.M.P.Nos.7563 and 7564 of 2021**

T.R.Kaleedass

... Petitioner

Vs.

R.Prathab

... Respondent

PRAYER : Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C., to set aside the conviction imposed in judgment dated 29.09.2023 made in C.A.No.11 of 2018 on the file of the learned I Additional District and Sessions Judge, Erode, confirming the conviction imposed in judgment dated 08.12.2017 made in S.T.C.No.279 of 2016 on the file of the learned Judicial Magistrate, FTC No.II, Erode.

For Petitioner : Mr.C.Ramaraj

For Respondent : Party-in-person



Crl.R.C.No.857 of 2024

ORDER

This criminal revision has been filed seeking to call for the entire records relating to the order passed by the learned I Additional District and Sessions Judge, Erode, in C.A.No.11 of 2018 dated 29.09.2023, confirming the order passed in S.T.C.No.279 of 2016 dated 08.12.2017 by the learned Judicial Magistrate, Fast Track Court No.II, Erode and to set aside the same.

2. The petitioner is the accused and the respondent is the defacto complainant. For the sake of convenience, the parties will be hereinafter referred to as 'accused' and 'complainant'.

3. The complainant initiated proceedings under Section 138 of the Negotiable Instruments Act in S.T.C.No.279 of 2016 before the learned Judicial Magistrate, Fast Track Court No.II, Erode against the accused stating that the accused borrowed a sum of Rs.5,70,000/- for his urgent needs and agreed to repay the same and the accused also issued post-dated cheque for a sum of Rs.5,70,000/-. When it was presented on 11.01.2016 for



Crl.R.C.No.857 of 2024

collection, the same was returned on 12.01.2016 as 'funds insufficient'.

Thereafter the complainant issued legal notice to the accused on 21.01.2016 and the same was received by the accused on 22.01.2016, however, the accused neither gave any reply nor repaid the amount.

4. After elaborate discussions, the trial Court convicted the petitioner under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for a further period of three months. Challenging the same, the accused filed appeal in C.A.No.11 of 2018 before the learned I Additional District and Sessions Judge, Erode and the learned I Additional District and Sessions Judge, Erode, vide judgment dated 29.09.2023, dismissed the appeal and confirmed the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court No.II, Erode. Aggrieved by the same, the present revision is filed.



CrI.R.C.No.857 of 2024

WEB COPY

5. The learned counsel for the petitioner submitted that during the pendency of this revision, the petitioner and the respondent decided to settle the dispute and entered into an amicable settlement for a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as full and final settlement towards the cheque amount of Rs.5,75,000/- and that the petitioner / accused has paid a sum of Rs.3,00,000/- in favour of the respondent for compounding the offence.

6. The respondent / complainant appeared before this Court and submitted that he has received a sum of Rs.3,00,000/- from the petitioner and has consented for compounding the offence under Section 138 of the Negotiable Instruments Act.

7. To that extent, compromise memo dated 05.07.2024 duly signed by both parties and the counsel for the petitioner has been filed by the parties before this Court. The petitioner / accused and respondent /



Crl.R.C.No.857 of 2024

complainant were also present in person before this Court and they were identified by their learned counsel.

8. In the case of ***Damodar S. Prabhu Vs. Syed Babalal H., reported in [2010 (5) SCC 663]***, the Full Bench of the Hon'ble Supreme Court has held that where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others are compoundable only with the permission of the Court. In this regard, it is useful to extract hereunder paragraphs 16 and 17:

"16. It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [cited from : K.N.C. Pillai, R.V.Kelkar's Criminal Procedure, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p.444]



Crl.R.C.No.857 of 2024

WEB COPY

"17.2. Compounding of offences .-- A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others as compoundable only with the permission of the Court."

17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [cited from : Arun Mohan, some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act – Trackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p.5]:

"...Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution,



WEB COPY



Crl.R.C.No.857 of 2024

but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeking the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque."

9. With the above principles in mind, if this Court see the present case, it is only a money transaction and the complainant has also received the amount from the petitioner / accused and in this regard, a memo of compromise dated 05.07.2024 has also been jointly filed by the petitioner and respondent. Therefore, the complainant's interest lies primarily in recovering the money rather than seeking the drawer of the cheque in jail. Further Section 147 of the Negotiable Instruments Act also empowers this Court to compound the offence under section 138 of the Negotiable Instruments Act.



Crl.R.C.No.857 of 2024

WEB COPY

10. In view of the ratio laid down by the Hon'ble Supreme Court of India and also considering the memo of compromise dated 05.07.2024 filed by the parties, this Court is of the view that, the judgment in S.T.C.No.279 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court No.II, Erode, is liable to be set aside.

11. Accordingly, the conviction and sentence imposed on the revision petitioner / accused in S.T.C.No.279 of 2016 dated 08.12.2017 on the file of the learned Judicial Magistrate, Fast Track Court No.II, Erode, and confirmed in C.A.No.11 of 2018 by the learned I Additional District and Sessions Judge, Erode, dated 29.09.2023, are set aside based on the compromise memo dated 05.07.2024 and the said compromise memo shall form part and parcel of the order. The revision petitioner / accused is acquitted from all the charges levelled against him.



Crl.R.C.No.857 of 2024

12. With the above observations, this Criminal Revision is allowed. Consequently, connected miscellaneous petitions are closed.

05.07.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

ssb

To

1. The learned I Additional District and Sessions Judge, Erode,
2. The learned Judicial Magistrate, Fast Track Court No.II, Erode.



WEB COPY



Crl.R.C.No.857 of 2024

M.DHANDAPANI, J.

ssb

Crl.R.C.No.857 of 2024

05.07.2024